

Montana Water Court  
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IN THE WATER COURT OF THE STATE OF MONTANA  
YELLOWSTONE DIVISION  
YELLOWSTONE RIVER BETWEEN THE CLARKS FORK YELLOWSTONE  
AND BIGHORN RIVERS BASIN (43Q)

\*\*\*\*\*

CLAIMANTS: Ed Trout; Lisa Trout

CASE 43Q-6008-A-2024  
43Q 208884-00

**NOTICE OF FILING OF MASTER’S REPORT**

This Master’s Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master’s Report within **10 days** of the stamped date if you disagree or find errors with the Master’s findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master’s Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master’s Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master’s Report.

**MASTER’S REPORT**

Water right claim 43Q 208884-00 is livestock claim to water from a spring known as Emerald Springs. The record owners of the claim are Ed and Lisa Trout. On August 20, 2024, the Trouts filed a Verified Motion to Amend the water right. The Motion seeks to correct the legal land description of the point of diversion.

The Motion included an August 13, 2024, letter from Mark Elison, Regional Manager of the Billings office of the Department of Natural Resources and Conservation (“DNRC”). The DNRC letter states that DNRC conducted a site visit and identified the correct location for the point of diversion for the claim.

### FINDINGS OF FACT

1. Claim 43Q 208884-00 correctly identifies its point of diversion in Lot 7, Block 4, Emerald Hills Subdivision. However, DNRC incorrectly modified the legal land description to the NESENW of Section 27, T1N, R27E during its examination.

2. The point of diversion legal land description should be corrected to the location requested in the Motion to Amend and confirmed by the DNRC site visit:

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	<span style="border: 1px solid red; padding: 2px;">NWNWSW</span> NESENW		27	1N	27E	YELLOWSTONE
<b>Period of Diversion:</b>	JANUARY 1 TO DECEMBER 31					
<b>Diversion Means:</b>	PIPELINE					
<b>Subdivision:</b>	EMERALD HILLS SUBD TRACT/LOT: 7 BLOCK: 4					

### CONCLUSIONS OF LAW

1. Pursuant to § 85-2-233(6), MCA, claimants may file motions to amend their own claims and objectors may file motions to amend their own objections. Rule 10, W.R.Adj.R. A properly filed claim of an existing right or an amended claim of existing right is prima facie proof of its content. § 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect. Rule 19, W.R.Adj.R. The modifications requested in the Motion to Amend are supported by a preponderance of the evidence and overcome the prima facie status of the claim.

2. When the Water Court receives a motion to amend, it reviews the motion to determine what, if any, additional notice of the motion is necessary. Rule 10, W.R.Adj.R. The Court conducts this review under § 85-2-233(6), MCA. When a party moves to

amend a claim filed after the issuance of a temporary preliminary decree or preliminary decree, the Court must evaluate whether the motion to amend "may adversely affect other water rights." *Id.* Because this claim already correctly identifies the point of diversion by its lot and block, the correction to the legal land description only clarifies an ambiguity on the face of the claim and does not have the potential to harm other water users.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court modify the claim as described above.

A Post Decree Abstract of Water Right Claim reflecting the recommended changes is attached to this Report for review.

**ELECTRONICALLY SIGNED AND DATED BELOW.**

SERVICE VIA USPS MAIL

Ed Trout  
Lisa Trout  
4563 Coulee Dr  
Billings, MT 59101

**POST DECREE  
ABSTRACT OF WATER RIGHT CLAIM**

**YELLOWSTONE RIVER, BETWEEN CLARKS FORK YELLOWSTONE & BIGHORN RIVER  
BASIN 43Q**

**Water Right Number:** 43Q 208884-00 STATEMENT OF CLAIM

**Version:** 2 -- POST DECREE

**Status:** ACTIVE

**Owners:** ED TROUT  
4563 COULEE DR  
BILLINGS, MT 59101-7117

LISA TROUT  
4563 COULEE DR  
BILLINGS, MT 59101-7117

**\*Priority Date:** DECEMBER 31, 1962

**\*Type of Historical Right:** USE

**\*Purpose (Use):** STOCK

**\*Flow Rate:** 5.00 GPM

**\*Volume:** THIS WATER RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCKWATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

**Source Name:** UNNAMED TRIBUTARY OF YELLOWSTONE RIVER

**Source Type:** GROUNDWATER  
ALSO KNOWN AS EMERALD SPRINGS

**Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1		NWN	27	1N	27E	YELLOWSTONE

**Period of Diversion:** JANUARY 1 TO DECEMBER 31

**Diversion Means:** PIPELINE

**Subdivision:** EMERALD HILLS SUBD TRACT/LOT: 7 BLOCK: 4

**Period of Use:** JANUARY 1 TO DECEMBER 31

**Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr</u>	<u>Sec</u>	<u>Tw</u>	<u>Rge</u>	<u>County</u>
1			W2	27	1N	27E	YELLOWSTONE

**Subdivision:** EMERALD HILLS SUBD TRACT/LOT: 7 BLOCK: 4

**Remarks:**

THE WATER RIGHTS LISTED FOLLOWING THIS STATEMENT ARE MULTIPLE USES OF THE SAME RIGHT. THE USE OF THIS RIGHT FOR SEVERAL PURPOSES DOES NOT INCREASE THE EXTENT OF THE WATER RIGHT. RATHER IT DECREES THE RIGHT TO ALTERNATE AND EXCHANGE THE USE (PURPOSE) OF THE WATER IN ACCORD WITH HISTORICAL PRACTICES.

208883-00 208884-00

STARTING IN 2008, PERIOD OF DIVERSION WAS ADDED TO MOST CLAIM ABSTRACTS, INCLUDING THIS ONE.